extended to CMRS providers.[21] Additionally, in the *Second CMRS Order*, the Commission stated that a requirement of reasonable interconnection was mutual compensation for traffic termination.[22]

Under this requirement, the LECs must compensate CMRS providers for the reasonable costs incurred by CMRS providers in terminating traffic that originates on the LEC's network.[23] This requirement is codified under Section 20.11 of the Commission's Rules, which states:

> (b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.
>
> (1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.

CMRS providers are, therefore, clearly entitled to mutual compensation, perhaps more appropriately called "termination compensation."[24] Termination compensation is compensation for

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[21] *Id.* at 1497-1498.

[22] *Id.* at 1498. *See also,* 47 C.F.R. § 20.11 (1995).

[23] *Id.*

[24] The term "mutual compensation" is a misnomer. The real issue is *terminating compensation*, i.e., that a carrier incurs -- and must be compensated for -- costs for the termination of someone else's traffic, and thereby becomes eligible for terminating compensation. However, one state, Connecticut, has ruled that paging carriers are not entitled
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the costs of terminating calling traffic that originates on another carrier's network. As CMRS carriers, paging carriers are entitled to compensation for terminating traffic that originates on another carrier's network.

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to mutual compensation in part because there is no mutuality of traffic between the paging carrier and the LEC. The Connecticut Department of Public Utility Control also denied compensation to wireless carriers on the basis that such carriers were not subject to its jurisdiction because their services were not substitutable for local exchange service. *See State of Connecticut, DPUC Investigation Into Wireless Mutual Compensation Plans,* Docket No. 95-04-04 (Sept. 22, 1995). This argument is a fiction because no matter whether the paging carrier's network originates traffic or not, the paging carrier incurs costs in the termination of traffic. Under any reasonable interconnection standard, the paging carrier is entitled to compensation for that termination.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECs AND CMRS PROVIDERS' NETWORKS

A. Compensation Arrangements

1. Existing Compensation Arrangements: Currently Effective Compensation Arrangements Either Do Not Exist Or Are Inconsistent With Commission Policy And The Communications Act As Revised, And Discriminate Against Paging Carriers.

PageNet has attempted to negotiate reasonable interconnection arrangements with all of the Bell Operating Companies, most of the large independent LECs, and several IXCs. Because PageNet lacks bargaining leverage in its negotiations with the LECs, and because the existing interconnection arrangements were established primarily without Commission oversight, the rates and terms of PageNet's interconnection arrangements vary greatly from LEC to LEC, and even from city to city within the same LEC's service area.

PageNet includes the Affidavit of Vic Jackson, attached as Appendix C, which provides a comparative summary of the various PageNet interconnection arrangements currently in effect. As the Affidavit shows, the arrangements reflect extreme and wholly unjustified variations in pricing for identical interconnection components. For example, Centel, Ameritech, U S West, Bell Atlantic, SNET, Southwestern Bell and BellSouth impose a single flat rate per trunk. These charges vary by as much as 50% from LEC to LEC. Pacific Bell, New England Telephone and GTE impose a similar flat per-trunk rate that is equivalent to those of the other LECs, but these carriers also impose *an additional* per-minute of use ("MOU") charge for LEC-originated traffic carried on the trunk. In other words, some LECs want the paging carrier to pay for the "privilege" of terminating LEC-originated traffic! The per-MOU charges differ literally by hundreds of percent from LEC to LEC. As a result of these highly disparate rate schemes, PageNet's access charges vary by orders of magnitude from LEC to LEC, even though they provide identical service in most instances.

In a telling contrast to these pricing practices, however, in interconnection tariffs filed by New York Telephone[25] and new interconnection proposals made by Ameritech, these LECs agreed to provide the transport link between their tandem switch and PageNet's MTSO without charge to PageNet. These LECs concede that the transport link is already paid for by the rates paid by the originating end user or the IXC that handles the traffic. (Of course, if the transport links are paid for in New York Telephone's and Ameritech's case, they are recovered in the

[25] The discrepancies in LEC interconnection practices also exist from state to state within a single LEC's region: New York Telephone has agreed not to impose access charges for the central office/MTSO link in New York, but New England Telephone has refused to provide a similar arrangement to PageNet in Massachusetts. Clearly, there is no reasonable basis for this disparity in NYNEX's interconnection policy.

charges of all of the other LECs as well.) Thus, the compensation arrangements for identical LEC facilities runs the gamut from no charge to the paging carrier for the intercarrier trunk, to a flat rate, to a combined flat rate for the trunk plus an origination usage charge.[26]

The enormous variability in these interconnection rates makes clear that: 1) there is no rational or factual basis for these rates, and the LECs are simply using their dominant position to extract monopoly rents from PageNet and other paging carrier; (2) the overall level of compensation demanded by these LECs is grossly excessive and patently anticompetitive; (3) the LECs that impose charges for the link between the LEC switch and the MTSO are double charging; and (4) the LECs that impose both flat rates and usage-based rates for this link are *triple charging*.

[26] Similarly, as shown in the Jackson Affidavit, Ameritech has agreed to pay terminating compensation to PageNet for local traffic. This development constitutes an admission that PageNet's argument for terminating compensation is wholly justified. In regard to existing interconnection arrangements, however, PageNet notes that, while some LECs have taken steps toward establishing fair and fully compensatory interconnection arrangements, to date, none has done so. The Commission must implement the full interconnection compensation program proposed by PageNet in these comments in order to acknowledge paging carriers' co-equal status.

The Jackson Affidavit also identifies another bottleneck interconnection element that the LECs have exploited in order to extract monopoly rents -- the assignment of NXX codes. As the spreadsheets attached to the Affidavit show, LEC pricing practices for the establishment of NXX codes vary dramatically. NYNEX does not impose such a charge, and Ameritech, while it has imposed a charge in the past, is now eliminating it. In contrast, most of the other Bell Operating Companies impose charges ranging from approximately $3,000 to over $9,000 for NXX establishment, with the most extreme case -- Pacific Bell -- imposing charges as high as *$30,500*. These charges are wholly unsupported, and indeed are not supportable. Moreover, to the best of PageNet's knowledge, the LECs do not impose similarly high charges for NXX codes provided to other LECs or other wireline service providers. Thus, the LEC NXX rates appear to be both excessive and unreasonably discriminatory. The practices of NYNEX and Ameritech constitute clear evidence that the charges imposed by the other LECs are unreasonable. The Commission should therefore require that the other LECs eliminate their charges for NXX establishment.

Even a superficial review of the LEC pricing practices makes clear that the currently effective paging interconnection arrangements are patently unreasonable, wholly unsupported, excessive and unreasonably discriminatory. The Commission simply cannot allow these insupportable and highly anticompetitive practices to continue. Below, PageNet discusses the principles that should form the basis of a fair and reasonable compensation structure.

2. General Pricing Principles.

The NPRM posits that bill and keep is appropriate in two instances: 1) where traffic between two carriers is roughly in balance, or 2) where the costs of termination are *de minimis*.[27] Neither applies in the case of traffic terminated to a paging carrier. First, virtually all calls to paging subscribers originate on the LEC network and terminate on the paging carrier network. Second, as discussed in subsection 3(b), below, the paging carrier incurs significant costs in receiving and then setting up and switching the terminating traffic, and in transporting it to the paging end user. These costs are discussed in the Technical Memorandum of Jan David Jubon, attached as Appendix D. Clearly, then, in the case of paging services, bill and keep is not an appropriate surrogate for actual compensation paid by the LECs to the paging carriers.

In order to promote efficient interconnection, and to compensate all parties for the functions that they perform, the

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[27] NPRM at ¶ 61.

Commission's CMRS compensation rules should reflect the following:

1. The Commission must ensure that all parties receive fair compensation for the network functions that they provide.

2. The existing application of LEC charges to paging carriers must be reexamined in order to eliminate LEC double and triple recovery and to promote fair and efficient interconnection.

3. The Commission must adopt rules that can implement fair and efficient co-carrier arrangements immediately, and not perpetuate the distortions of interconnection terms established in the past.

PageNet discusses these factors in the context of its specific pricing proposals below.

3. Pricing Proposals: The Commission Must Adopt A Compensation Structure That Fairly Compensates Both LECs And Paging Carriers For The Functions That They Perform.

The structure of LEC/paging carrier interconnection/ compensation arrangements must ensure that: (1) LECs do not charge paging carriers for transporting LEC-originated traffic[28] from the LEC network to the paging carrier's MTSO; and (2) the paging carrier is fairly compensated for terminating the traffic on its network. As PageNet discusses below, these principles

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[28] "LEC originated traffic" must be read to include all traffic handed off from LEC facilities, and must not be limited to traffic originated by the LEC's directly-connected subscribing end user.

require the adoption of a compensation arrangement that: 1) ensures that the LEC does not over-recover charges associated with the inter-carrier link between the LEC switch and the paging carrier MTSO, and 2) provides immediate and full compensation to the paging carrier for the call set up, switching and transport functions that it performs.

a. The Commission Must Ensure That LECs Compensate Paging Carriers For Terminating LEC-Originated Traffic On The Paging Network.

The NPRM observes that the Commission in 1987 established the principle of termination compensation for CMRS providers: "This principle requires LECs to compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities."[29] The Telecommunications Act of 1996 reiterates this determination, repeatedly stating the Congressional intent that competitive carriers should be compensated for traffic that is terminated over their networks.[30] As discussed above, however, the Commission's proposed bill and keep solution does not work for

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[29] NPRM at ¶20 (citing *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910, 2915 (1987)).

[30] Act at §§ 251(a)(5) & 252(d)(2)(A)(i) (1995). To the extent that paging carriers in the future original traffic that terminates on the LEC networks, PageNet anticipates paying reasonable compensation to the LEC.

paging-only carriers because of the predominantly one-way nature of paging traffic. As a result, and as discussed below, the Commission must mandate actual terminating compensation for paging carriers.

b. Compensation On An Interim Basis Should Be Based On Existing LEC Cost Elements.

PageNet is concerned that the *de novo* prescription of compensation rates would result in unreasonable delay, and would continue to deny paging carriers effective interconnection for an extended period of time. This concern is especially compelling in light of the 1996 Act's requirement that the Commission complete over 80 rulemaking proceedings over the next two years. This mandate places an enormous burden on Commission resources, and makes it highly unlikely that the Commission could complete a full rate investigation and prescribe effective termination compensation rates in a reasonably timely manner.

These concerns compel the use of existing LEC cost measures as a basis for establishing reasonable rates for the switching and transport functions that paging carriers perform.[31] The use

[31] PageNet reiterates that this approach is necessary because bill and keep arrangements fail to provide paging carriers with any compensation terminating the one-way paging traffic. Reference to LEC costs may not be appropriate or necessary for establishing interconnection rates for other CMRS providers.

of LEC costs for local switching and local transport to establish the compensation levels of LEC traffic terminated over paging carriers' networks will permit the Commission to establish reasonably compensatory rates without inordinate delay.

Reference to the LECs' costs is appropriate for a number of reasons. First, the functions performed by the paging carriers' switching and transport facilities are functionally equivalent to the functions reflected in the LEC's local switching and transport charges. See Jan David Jubon Technical Memorandum at Appendix D. Second, it is reasonable to presume that rates established for paging carriers through this practice will be just and reasonable, at least on an interim basis.

Finally, reliance upon tariffed LEC rates to establish a ceiling for services of competitive carriers is a practice that has long been used by the Commission. The expectation that dominant carrier rates would establish a market cap was the underpinning of the Commission's forbearance policy for almost two decades, and supported the Commission's determination that nondominant carriers need not file tariffs.[32] In the case of

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[32] *See* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed

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operator service providers, the Commission prescribed the rates of AT&T as a cap for the industry.[33] Thus, the proposal to establish LEC tariffed rates for local switching and transport as an interim compensation level for paging carriers is well supported by established precedent, and would allow the Commission to establish reasonable compensation levels immediately.

For all of the reasons discussed above, PageNet urges the Commission to adopt the termination compensation system discussed herein, at least as an interim solution. A detailed discussion of appropriate compensation rates for paging carriers is found in Section IV, *infra*, and in the attached Memorandum of the Drazen Consulting Group, at Appendix E. Such action would implement a

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Rulemaking, FCC No. 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982), *recon.*, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983), *vacated, AT&T v. FCC,* 987 F.2d 727 (D.C. Cir. 1992), *cert. denied, MCI Telecommunications Corp. v. AT&T,* ___ US ___, 113 S.Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984), *recon.,* 59 RR2d 543 (1985); Sixth Report and Order, 99 FCC 2d 1020 (1985), *rev'd, MCI Telecommunications Corp. v. FCC,* 765 F.2d 1186 (D.C. Cir. 1985)(collectively known as *Competitive Carrier Decisions*).

33 *See generally,* Oncor Communications, Inc., 77 RR2d 1310 (Com.Car.Bur., 1995).

reasonably compensatory program immediately to replace the patently unreasonable, discriminatory, and anticompetitive arrangements that currently exist. Moreover, the Commission and industry will retain the ability to pursue a full ratemaking proceeding to determine if different rates should be prescribed at a future date.

B. Implementation Of Compensation Arrangements.

1. Jurisdictional Issues: The Commission Has Plenary Jurisdiction Over CMRS Call Termination Rates For Interconnection With The LECs.

The Telecommunications Act of 1996 confirms that the Commission has plenary and exclusive jurisdiction over the rates charged by CMRS providers to terminate traffic originating from LECs and other co-carriers. Section 253(e) expressly preserves the removal of state jurisdiction over CMRS interconnection agreements under Section 332(c)(3) of the Communications Act of 1934 (as amended by the Omnibus Budget Reconciliation Act of 1993). Further, eliminating any uncertainty over the Commission's authority to occupy the field, Section 251(d) provides that the Commission "shall complete all actions necessary to establish regulations to implement" the interconnection and other provisions in Section 251 of the new legislation.

a. Preemption Of State Jurisdiction.

In the Omnibus Budget Reconciliation Act of 1993, Congress amended Section 332 of the Communications Act to provide that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service." 47 U.S.C. § 332(c)(3). This categorical language removes all state jurisdiction over CMRS rates, including the rates charged by CMRS providers to terminate traffic originated by LECs and other co-carriers.[34] In that same legislation, Congress amended Section 2(b) to provide that the Communications Act does not affect the states' retained jurisdiction over intrastate services "[e]xcept as provided in . . . Section 332." 47 U.S.C. § 152(b). That amendment clarifies that Congress removed from the states jurisdiction over rates and entry for both interstate and intrastate commercial mobile services.[35]

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[34] *See Florida Public Telecommunications Ass'n. v. F.C.C.*, 54 F.3d 857 (D.C. Cir. 1995).

[35] Under Section 332(c)(3), a state desiring to retain jurisdiction over CMRS rates was required to submit a petition to the Commission showing that (i) CMRS market conditions fail to protect consumers against unreasonable or discriminatory rates; or (ii) such market conditions exist for services serving as a substitute for landline local exchange services. By spelling out in detail how a state can obtain jurisdiction over CMRS rates, this provision confirms that Congress intended to remove such authority in the first instance through Section 332(c)(3).

The removal of state authority over CMRS rates stemmed from Congress' recognition that uniform federal policies are necessary to promote the nationwide growth of mobile services. Congress acknowledged that, by their nature, mobile services operate without regard to state jurisdictional boundaries.[36] In that environment, disparate state regulation of commercial mobile services could undermine the development of CMRS competition and the nation-wide build-out of a wireless infrastructure. Congress intended for mobile services to be subject to uniform rules,[37] and it logically selected the Commission to exercise plenary and exclusive jurisdiction over intrastate and interstate CMRS entry and rates.[38] Using that authority, the Commission could "establish a Federal regulatory framework to govern the offering of all commercial mobile services."[39]

The Commission need not reach the question whether Section 332(c)(3) gives it exclusive jurisdiction over the rates charged

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[36] *See* H.R. Rep. No. 103-111, 103d Cong., 1st Sess. at 260 (1993) (Congress intended to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure").

[37] *Id.* at 259.

[38] *See* H.R. Rep. No. 103-213, 103d Cong., 1st Sess. at 497 (1993) (emphasizing amendment to 47 U.S.C. § 152(b) as "clarify[ing] that the Commission has the authority to regulate commercial mobile services").

[39] *Id.* at 490.

by LECs or other co-carriers to terminate traffic originated by paging carriers.[40] As noted above, paging traffic is one-way; it is all terminated by the paging companies. As a result, the question presented in this section is whether the Commission has jurisdiction over CMRS termination rates, and Section 332(c)(3) expressly answers that question in the affirmative.

The Commission's jurisdiction under Section 332(c)(3) extends to the outrageous but common LEC practice of charging paging companies for traffic which *the paging companies* terminate and for which the LECs otherwise receive over-compensation from the rates they impose upon end-user callers. The Commission's jurisdiction over CMRS rates for terminating LEC-originated traffic necessarily extends to any attempt by LECs to impose rates upon paging companies for the exact same traffic. If the Commission has exclusive jurisdiction over the rates charged by CMRS providers to terminate LEC-originated traffic, then it has exclusive jurisdiction over efforts by LECs to collect fees from paging carriers for that same land-to-mobile terminating traffic.

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[40] In a previous decision, the Commission held that state regulation of interconnection rates for LEC wireline services was outside the scope of exclusive federal jurisdiction under Section 332(c)(3). *Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within The State of Louisiana*, 10 FCC Rcd 7898, 7908 (1995).

Such fees would operate as an offset against the CMRS provider's termination rates, and the Commission cannot regulate the latter effectively without regulating the former as well.

The Telecommunications Act of 1996 expressly confirms the Commission's plenary and exclusive jurisdiction over CMRS rates, including interconnection rates. Section 253 governs market entry and preemption, and subsection (e) provides that "[n]othing in this section shall affect the application of section 332(c)(3) to commercial mobile services providers." Further, by including this provision in the new legislation, Congress removed any doubt that the Commission's jurisdiction covers CMRS interconnection rates as well as retail rates charged by CMRS providers to end users. Were Section 332(c)(3) limited to retail rates alone, there would have been no need to insert subsection (e) into Section 253.[41] Therefore, Section 332(c)(3) of the Communications Act removes all state authority over entry and rates for the interstate and intrastate services of CMRS providers.

Finally, paging traffic is inherently interstate in nature, and this characteristic of the service requires that the

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[41] *See Russello v. United States*, 464 US 16, 23 (1983)(when Congress uses different language in different sections of a statute, it does so intentionally); *see also International Union, WMVA v. MSHA*, 823 F.2d 608 (DC Cir. 1987).

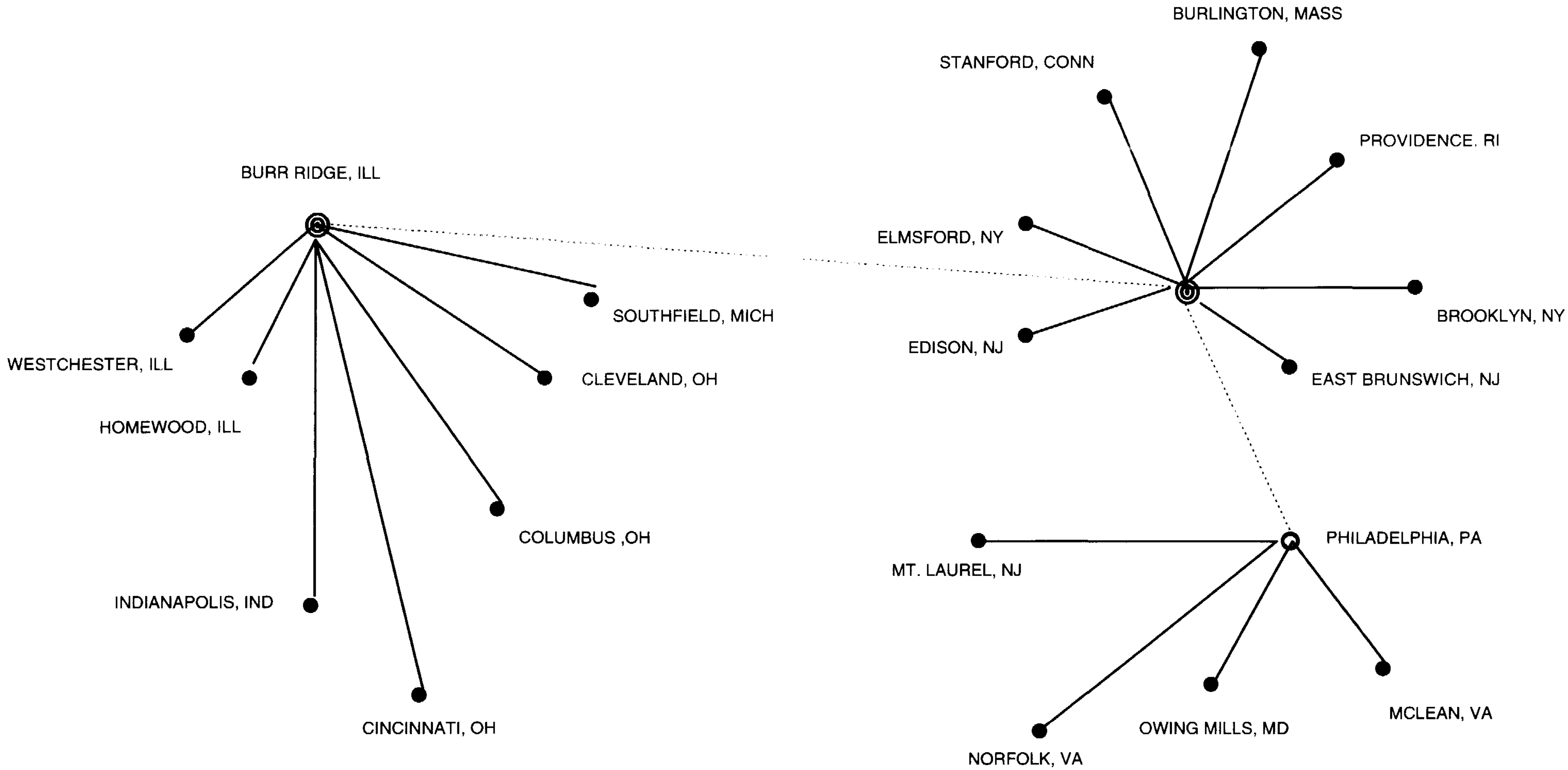
Commission exercise exclusive jurisdiction over it. Attached Diagram 1 illustrates the configuration of two of PageNet's regional hubs, which are characteristic of PageNet's network configuration nationwide. As Diagram 1 makes clear, a paging call on the PageNet network is transmitted simultaneously from a number of transmitters located in different states in order to provide regional or national coverage. Thus, a call originated in Washington, D.C. may be terminated over facilities located in New York, New Jersey, Philadelphia, the District of Columbia, Maryland, or Virginia. Because paging customers are itinerant by definition, it is impossible to determine the terminating party's location in advance. Because the paging call is broadcast simultaneously from facilities in different states, and because there is no practicable means of determining whether the party receiving the paging call will be in the state of origination or in another location, it is impossible to segregate intrastate and interstate paging calls. In such cases, the Commission must exercise plenary jurisdiction.[42] For all of the reasons discussed above, the Commission is fully empowered to exercise exclusive and plenary jurisdiction over all rates, terms and

[42] *See Louisiana Pub. Ser. Comm'n v. FCC,* 476 US 355, 375 n.4 (1986). *See also California v. FCC,* 905 F.2d 1217 (9th Cir. 1990); *Illinois Bell Tel. v. FCC,* 883 F.2d 104 (D.C. Cir. 1989); *National Ass'n of Reg. Util. Comm'ners v. FCC,* 880 F.2d 422 (D.C. Cir. 1989).

conditions that establish interconnection between LEC and paging carrier networks.

DIAGRAM 1

ILLUSTRATIVE DIAGRAM OF PAGENET INTERSTATE NETWORK



b. The Commission's Authority To Regulate CMRS Rates.

By itself, Congress' amendment of Section 332 in the Omnibus Budget Reconciliation Act of 1993 exhibited Congress' intention that the Commission occupy the field of CMRS entry and rate regulation. Going one step further, the Telecommunications Act of 1996 removed the need to interpret such authority into Section 332. Section 251 governs interconnection and provides that every telecommunications carrier has a duty to interconnect with other carriers. As regards incumbent LECs, Section 251(c)(2) provides that such interconnection applies to both telephone exchange and exchange access services, and that interconnection must be available at any technically feasible point "on rates, terms and conditions that are just, reasonable, and non-discriminatory." By its terms, Section 251 applies equally to interconnection for intrastate and interstate services between telecommunications carriers.

Section 251(d)(1) grants the Commission authority to "complete all actions necessary to establish regulations to implement the requirements of this section." That grant of plenary authority encompasses, among other things, the rates charged by CMRS providers to LECs for the termination of LEC-originated local exchange traffic. Further, Section 251(i) confirms that the Commission retains full authority under Section 201 of the Communications Act. Section 201(a) authorizes the

Commission to require common carriers to "establish physical connection with other carriers." 47 U.S.C. § 201(a). Further, Section 201(b) requires all common carriers to charge just and reasonable rates, and the Commission has jurisdiction under Sections 1 and 4(i) of the Communications Act to adopt regulations to implement that provision.

Finally, Sections 251(d)(3)(B)&(C) of the 1996 Act expressly limit the ability of a state regulatory body to enforce access and interconnection obligations. Those sections of the 1996 Act make clear that a state may not enforce regulations that are inconsistent with the interconnection terms and conditions that the Commission is currently establishing pursuant to Section 251(d)(1). This section clearly establishes the Commission as the primary regulator of interconnection rates, terms and conditions, and permits state regulation only to the extent that it is consistent with the standards established by the Commission. Therefore, the Telecommunications Act of 1996 confirms the Commission's plenary and exclusive authority, consistent with Section 332(c)(3) of the Communications Act, to occupy the field of CMRS rate and entry regulation.[43]

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[43] While the Commission continues to derive its authority over CMRS interconnection from Section 332, as a matter of equity and sound public policy, the Commission should apply the interconnection standards that it establishes for other carriers under Section 251 of the Telecommunications Act of 1996 to CMRS carriers as well. Failure to accord to CMRS

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c. The Commission Has The Authority To Void Existing Interconnection Contracts In Order To Implement Its CMRS Interconnection Rules.

As PageNet discusses in Section II(A), *supra*, the CMRS interconnection arrangements currently in effect reflect the inferior negotiating position of CMRS providers and establish excessive and unreasonably discriminatory rates, and overly burdensome terms and conditions upon PageNet and other CMRS carriers. In order for fair and equitable CMRS interconnection rates, terms and conditions to be implemented, these existing interconnection contracts must be voided. As discussed below, such relief is well within the Commission's authority, and is well established in Commission decisions and court precedent.

The Commission has taken action voiding individual carrier contracts repeatedly, both as a result of its own policy initiatives and federal legislation. For example, when the Commission introduced the LEC access charge regime, it effectively voided the "ENFIA" contracts that had previously governed compensation for LEC-provided originating and

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carriers the same interconnection rights enjoyed by other carriers would result in a discriminatory classification, in terminating access.[44] Similarly, the Commission's actions in implementing the Cable Television Consumer Protection and Competition Act of 1992 effectively voided effective agreements between cable operators and cable programming services.[45]

While the Commission does not have unfettered discretion to void existing contracts, it is fully empowered to do so upon a finding that find that the existing contracts are "unjust, unreasonable, unduly discriminatory, or preferential."[46] As discussed in detail herein, the currently effective CMRS interconnection agreements are patently discriminatory and otherwise unreasonable, especially in light of the interconnection standards that the Telecommunications Act of 1996 establishes for other carriers. The Commission therefor can -- and indeed must -- void the existing agreements and replace them with reasonable, fully compensatory interconnection rates, terms and conditions, as set forth in these comments.

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[44] *MTS and WATS Market Structure*, 97 FCC 2d 682, 764 (1983).

[45] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 2965, 2988 (1993).

[46] *MCI Telecommunications Corp. v. FCC*, 665 F.2d 1300 (D.C. Cir, 1981); *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF PAGING TRAFFIC

A. The Commission's Procompetitive Interconnection Policies Have Been Ignored By Most LECs.

The Commission has succinctly recognized that the ability to interconnect is increasingly important because "telecommunications is increasingly provided by a system of interdependent interconnected networks, often referred to as a 'network of networks'." NPRM at ¶ 8. The Commission simultaneously has recognized that efficient interconnection benefits both providers and subscribers of service (*see* ¶ 9), and that such benefits can be negated if interconnection is not generally available at reasonable rates and upon reasonable terms. As the Commission correctly notes, "the availability of interconnection cannot be divorced from its price. . . . An interconnection obligation is undermined if the charges imposed for interconnection are excessive, and society will not enjoy the benefits. . . ." NPRM at ¶10.

After years of struggle with the local exchange companies for interconnection, PageNet believes that most if not all local exchange carriers enable their local exchange subscribers to terminate calls to paging subscribers. However, PageNet's experience in negotiating interconnection agreements also demonstrates that the LECs have consistently used their monopoly